

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)

Docket No. 00-0259

Petition for Expedited Approval of)
Implementation of a Market-based)
Alternative Tariff, to Become Effective)
on or before May 1, 2000, Pursuant to)
Article IX and Section 16-112 of the)
Public Utilities Act)

(cons.)

Central Illinois Public Service Company)
Union Electric Company)

Docket No. 00-0395

Petition for Approval of Revisions to)
Market Value Tariff, Rider MV)

Illinois Power Company)

Docket No. 00-0461

Proposed New Rider MVI &)
Revisions to Rider TC)

ILLINOIS COMMERCE COMMISSION
AUG 1 9 29 AM '00
CHIEF CLERK'S OFFICE

**ILLINOIS POWER COMPANY'S RESPONSE TO AMEREN'S MOTION TO
RECONSIDER & ILLINOIS POWER'S MOTION TO RECONSIDER
CONSOLIDATION**

Pursuant to the § 200.190 of the Commission's Rules of Practice, Illinois Power Company ("Illinois Power" or "IPC") hereby (1) responds to the Motion to Reconsider filed by Central Illinois Public Service Company and Union Electric Company (collectively, "Ameren") on July 17, 2000, and (2) moves to reconsider consolidation of its case (00-0461) with either Ameren's (00-0395) or Commonwealth Edison Company's ("CE") (00-0259).¹

¹

Illinois Power reserves its right to respond to the Illinois Industrial Electric Consumer's
(continued...)

Illinois Power agrees with Ameren's Motion and requests that it be granted. For many of the same reasons and additional ones, IPC also hereby moves to have its proceeding severed from both Ameren's and CE's (or alternatively, since many of the most difficult issues arise due to consolidation with CE's case, IP moves to sever its and Ameren's proceedings from CE's). There are both legal and policy reasons that the three cases should not be consolidated.

First, as a legal matter, the Public Utilities Act ("PUA") specifically permits each utility to propose and have a adopted market value index ("MVI") that is "applicable to the market in which *the utility* sells, and the customers in its service are buy, electric power and energy." § 16-112(a) (emphasis added). The General Assembly recognized that the electric market in Illinois is not a homogenous whole but rather that there were significant differences among different parts of the State.² Indeed, on the important issue of adopting a MVI alternative to the Neutral Fact Finder ("NFF") process, the General Assembly expressly addressed the problem of imposing an MVI that might not suit each utility's distinct situation. Section 16-112(m) provides that the Commission "shall not have the power to otherwise order the electric utility to implement a modified [MVI] tariff ..." Here, each company's proposal has much that is tailored to the specific situation of the company and is different enough that it seems unlikely that (1) any two utilities will agree to the third's proposal, or (2) that the Commission will be able to craft a compromise alternative acceptable to all. Because a utility can reject any modifications (and return to the NFF process, which all

¹(...continued)

("IEEC") Motion to Reconsider filed on July 25 within the time limits set by the Commission's Rules or by the Hearing Examiner.

² The General Assembly recognized the differences among the State's electric markets even in the NFF process when it set as the default the publication of utility-specific values by the NFF but permitted state-wide (or other combined values) if appropriate. See § 16-112(d).

parties appear to agree yields acceptable values by chance only), the attempt to achieve uniformity is misplaced.

Furthermore, as a matter of policy, the Commission should reconsider its consolidation of the three proceedings. CE's cases stands in a very different posture than Ameren's or IPC's. Three separate appeals of CE's Interim Order are pending. The legal and jurisdictional complexities that arise from the dual concurrent processes (for example, we note that the IIEC has filed a motion to stay 00-0259 (CE's case) in the Fourth Appellate Court case) should not be allowed to delay the remaining two cases. This is particularly true because currently neither Ameren nor IPC have an MVI based alternative in place. Thus, any delay in reaching closure in our cases has a real impact on every non-residential customer and marketer in our territories. CE has an interim tariff in place and thus is not faced with the same problem. There can be no doubt that the consolidation has in fact delayed a final order in both Ameren's and IPC's cases. IPC initially proposed a schedule that reached a final order by the end of this year. Our proposed schedule was reached after discussions with many interested parties³ and was crafted in an attempt to provide all parties with sufficient time to fully explore the issues while permitting a timely implementation well in advance of next year's summer season. Yet, after consolidation, a new schedule was set that delays a final order by about 60 days. Although IPC could accept this delay if its proposal to recalculate market values on a monthly basis is adopted, a more fundamental concern has arisen. If the IIEC's jurisdictional arguments are upheld, the impact on the consolidated proceeding could fall disproportionately to IPC and Ameren: if the Commission has no jurisdiction to enter an order

³ Indeed, IPC has attempted to work with many parties collaboratively throughout its process in an effort to achieve a final product that best fits the needs of all with a stake in the outcome. We continue to be willing to discuss possible modifications with any interested party.

in 00-0259 pending the appellate process, then any final order in the consolidated cases might lead to all three being reversed. This could lead to IPC and Ameren having no MVI alternative in place for some time to come as new proceedings would be needed. All of this uncertainty can be avoided by treating each case as the General Assembly intended—separately.

IPC understands that uniformity in many aspects of the implementation of choice is a laudable goal and should be explored wherever possible. Unfortunately, in these cases, it is unlikely to be achievable due to the law and the very attempt at it is likely to harm customers and marketers because of the attendant delay and the ability of a utility to reject any “uniform” modification that is not appropriate to its circumstances.

WHEREFORE, Illinois Power requests that Ameren’s Motion to Reconsider be granted and that Illinois Power’s case also be severed from both CE’s and Ameren’s.

Respectfully submitted,

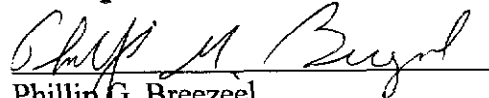
A handwritten signature in cursive script, appearing to read "Joseph L. Lakshmanan", followed by a horizontal line.

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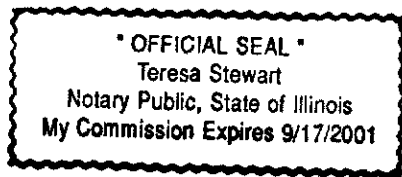
Dated: July 31, 2000

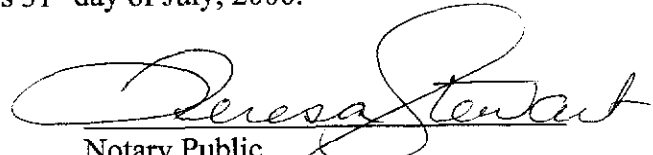
VERIFICATION

I, Phillip G. Breezeel, being sworn on oath, state that the foregoing is true and accurate to the best of my knowledge, information and belief.


Phillip G. Breezeel

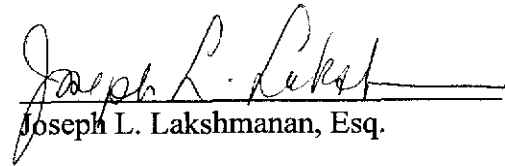
Subscribed and sworn to before me this 31st day of July, 2000.




Notary Public

CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the 31st day of July, 2000, I served a copy of Illinois Power Company's Response to Ameren's Motion to Reconsider and Illinois Power Company's Motion to Reconsider Consolidation by first class mail, from Decatur, Illinois, postage prepaid to the individuals on the service list attached.


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